IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2476 OF 2004

Gafoor Dastagir Shiekh ... Petitioner

versus

State of Maharashtra and anr. ... Respondents

...

Mr.M. Muqim Khan, for the Petitioner.

Mr.V.B. Konde Deshmukh, for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

5th April 2005

ORAL JUDGMENT :

. This petition takes exception to the externment order passed by the Deputy Commissioner of Police, Zone-VIII, dated January 28, 2004 and the order passed by the appellate authority confirming the externment order in Appeal No. EXT 01/2004/190/VS-5 by its decision dated 17th May 2004. Both the decisions are subject matter of challenge in this writ

petition.

2. The proceedings against the Petitioner for externment were initiated in exercise of powers under section 56(1)(a) and (b) of the Bombay Police Act. After issuing show cause notice, the competent authority considered the explanation offered by the Petitioner and by the impugned order directed the Petitioner to remove himself from the City of Mumbai, Mumbai Suburban, Thane and District Raigad for a period of two years, having found that the materials on record clearly attracted action under section 56(1)(a) and (b) of the Act. That order was taken in appeal by the Petitioner, which appeal has been rejected. The arguments, which were canvassed before the appellate authority, have been articulated in para 4 of the order of the appellate authority.

3. Before this Court, in all five contentions have been raised. I shall deal with them seriatim.

4. The first contention is that, in the show

cause notice issued by the competent authority, reference is made to two criminal cases registered against the Petitioner, being CR.No. 41/2003 and No. 120/2003. It was argued that the Petitioner has been acquitted in respect of the later case by the Criminal Court. According to the Petitioner, therefore, the action against the Petitioner under section 56(1) of the Act cannot be sustained. Merely because the Petitioner has been subsequently acquitted in respect of one of the criminal cases, which were pending at the relevant time, will not warrant setting aside of the externment order per se. Assuming that the Petitioner was to be later on acquitted in both the criminal cases, even so that would have made no difference to the action initiated against the Petitioner, if the said action was otherwise in conformity with the requirement of section 56 of the Act. Viewed in this perspective, the first ground is without any substance.

5. The second contention raised before this Court is that the show cause notice refers to four in camera statements. However, no details

of the incident, date and place, are provided in the recital with reference to the said four in camera statements. Reliance was placed on the decision of our High Court in the case of Iqbal Hussain Abid Hussain Qureshi v. State of Maharashtra and others, Criminal Writ Petition No. 1450 of 1998, decided on 20th November 1998 (Judgments on Bombay Police Act, page 284) to support this proposition. Indeed, if the show cause notice makes no reference to the date of incident, time and place, action founded on such show cause notice cannot be sustained. That is the established legal position. However, in the present case, the show cause notice gives description about the episodes disclosed by the witnesses, whose statements have been recorded in camera. The witnesses have deposed in relation to area where the Petitioner was presently residing in Bandra - Kurla Complex. The recitals in the show cause notice would clearly indicate the place where the Petitioner was residing and had indulged in threatening the witnesses, as stated by them. Besides the place, even the date and time of incident is mentioned by the respective witnesses. Counsel for the

Petitioner, however, relying on the statement made by Witness 'A' contended that he has not given specific date, but only mentioned that the incident had happened in the first week of June 2003. In my opinion, that is sufficient disclosure about the date of the incident referred to by the said witness. Though it is a general description of first week of June 2003, that does not mean that no date has been mentioned at all. The statement of that witness has been recorded on 3rd July 2003, and if that witness has indicated generally that the incident had happened in the first week of June 2003, that would be sufficient disclosure about the date of the incident. Accordingly, there is no substance in the argument that the show cause notice is bereft of the details relating to the date, time and place of the incident, referred to by the witnesses in the statements in camera.

6. The next argument canvassed on behalf of the Petitioner is that the area of operation of the Petitioner is allegedly in Bandra - Kurla Complex. If it is so, directing externment from Mumbai, Mumbai Suburban, Thane and District

Raigad is obviously excessive and cannot be sustained in the eye of law. Reliance was placed on the decision of our High Court in the case of Umar Mohamed Malbari v. K.P. Gaikwad, Criminal Writ Petition No. 1253 of 1987, decided on 17th February 1988 (Judgments on Bombay Police Act, page 236). There is no difficulty in accepting the submission that if the area of externment is excessive, such order will have to be set aside as untenable in law. However, this submission clearly overlooks the principle stated by the Apex Court in the case of Pandharinath v. State, reported in A.I.R. 1973 S.C. 630, which principle clearly applies to the fact situation of the present case, as it pertains to Bandra, which is part of Mumbai. The districts of Thane and Raigad are neighbouring districts and in the reported case (supra), the Apex Court, in paras 17 to 20, has observed that externment from both these districts, being neighbouring districts, and having regard to the activities in those areas, the order cannot be said to be improper if the said subjective satisfaction has been reached by the externing authority. Viewed in this perspective, there is no substance in the third

contention canvassed on behalf of the Petitioner.

7. It was next contended that the show cause notice makes no reference to the period of indulgence of the illegal activities of the Petitioner. It was contended that for want of such information stated in the show cause notice, the action against the Petitioner cannot be sustained. Reliance was placed on the decision of Gujarat High Court in the case of Ranchhod Ramji Machi v. B.J. Gadhvi and another, Special Criminal Application No. 10 of 1986, decided on 17th February 1986 (Judgments on Bombay Police Act, page 405), as also the decision of our High Court in the case of Prakash Sitaram Shelar v. State of Maharashtra and others, Criminal Writ Petition No. 909 of 1989, decided on 15th September 1989 (Judgments on Bombay Police Act, page 355) to buttress this submission. In the present case, the show cause notice refers to two criminal cases registered against the Petitioner in the year 2003; it also refers to the statements of witnesses recorded in camera in the month of July 2003, which, in turn, refers to the instances of specific period. If this is the

nature of material on record, it is not possible to accept the submission that the show cause notice does not refer to specific period of illegal activities indulged in by the Petitioner. Accordingly, this submission also does not commend to me.

8. The last argument canvassed before this Court is that in the in camera statements, apprehension has been expressed by the respective witnesses that they were not willing to come forward to depose against the Petitioner, because of threat perception. It is submitted that the Petitioner has faced fullfledged trial in connection with CR.No. 120/2003 and all the witnesses named by the prosecution have deposed against the Petitioner. It is, therefore, indicative of the fact that the witnesses were willing to depose against the Petitioner and, therefore, the ground on which proposed action was initiated against the Petitioner was imaginary. Reliance was placed on the decision of our High Court in the case of Yeshwant Damodar Patil v. Hemant Karkare, Deputy Commissioner of Police, Thane and another, Criminal Writ Petition

No. 324 of 1989, decided on 29th August 1989 (Judgments on Bombay Police Act, page 261) to support this proposition. In that case, in para 8, it has been observed that the show cause notice did not state that the witnesses are not willing to give evidence against the proposed externee. Such is not the position in the present case. In the present case, the show cause notice clearly states that the witnesses are not coming forward to depose against the Petitioner. In that view of the matter, the decision pressed into service on behalf of the Petitioner is of no avail. In any case, the fact that some of the witnesses have deposed in the fullfledged trial held against the Petitioner cannot be the basis to doubt the subjective satisfaction reached by the concerned authority on the basis of material to support the position that the witnesses were not coming forward to depose against the Petitioner.

9. The fact that 100 persons have supported the case of the Petitioner before the externing authority also does not belie the version of the witnesses, who have deposed in camera that they

were not willing to depose against the Petitioner in public. The fact that large number of affidavits have been filed to support the case of the Petitioner cannot undo the said statements of the witnesses; and more so, the subjective satisfaction reached by the competent authority, which was founded on the relevant material. The competent authority, as well as the appellate authority, has considered this aspect of the matter. As such, the subjective satisfaction reached by the Authorities cannot be doubted nor substituted merely because this Court may take a different view on the same material.

10. It is relevant to mention that insofar as the inadequacy in the show cause notice such as about the non-mention of date, time and place of the incident and about the period of illegal activities undertaken by the Petitioner is concerned, no specific stand has been taken in the reply filed before the competent authority. Indeed, such ground appears to have been taken in the appeal before the appellate authority, but there is nothing to show that the said ground was argued before the appellate authority. The

appellate authority in para 4 of the order has clearly adverted to the grounds urged before it for the purpose of appeal. It is not the case of the Petitioner that the grounds, which are now pressed before this Court, were argued before the appellate authority and the appellate authority has failed to consider the same. No such statement is made in the petition. If it is so, it is not open for this Court to interfere with the conclusion reached by the appellate authority, because that would amount to criticising the decision of the appellate authority, even though the Petitioner had not specifically argued those points before the appellate authority for its consideration. The Petitioner, therefore, cannot be permitted to raise new contentions before this Court, which he ought to have taken in the first instance before the competent authority or, at least, before the appellate authority, which was the final fact finding authority.

11. Accordingly, there is no substance in this writ petition. The same is dismissed.

(A.M.KHANWILKAR,J.)